

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

SEAL SOURCE INC.,

CV NO. 09-875-HU

Plaintiff,

v.

FINDINGS AND RECOMMENDATION

**CESAR CALDERON; SEAL SUPPLY
PERU SA; DULIA CASTRO; CASDEL
HNOS SA; JOHN DOES 1 THROUGH 10,**

Defendants.

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HUBEL, Magistrate Judge:

This is an action for violation of the Computer Fraud and
Abuse Act, 18 U.S.C. § 1030; misappropriation of trade secrets;
interference with economic relations; conversion; and breach of

1 fiduciary duty. Plaintiff Seal Source, an Oregon corporation, is a
2 supplier of hydraulic and replacement seal kits throughout the
3 United States and, among other places, Latin America. Defendant
4 Calderon was employed by Seal Source on January 24, 2006 as Seal
5 Source's Spanish Customer Service Representative. Calderon was
6 responsible for marketing and sales of Seal Source products
7 throughout Latin America, including to defendant Castro, the owner
8 of Casdel HNOS SA, a Peruvian corporation that transacts business
9 in the United States. Calderon was laid off on July 8, 2009. First
10 Amended Complaint (FAC) ¶¶ 7-9.

11 On July 22, 2009, defendant Hydraulics Supply International
12 Corp. (HSIC) was incorporated in Florida, effective July 23, 2009.
13 FAC ¶ 11. The articles of incorporation name defendant Calderon as
14 president and defendant Dulia Castro as vice president of HSIC.
15 Seal Source alleges that Calderon and Castro organized HSIC to
16 "receive and use information defendant Calderon had access to as an
17 employee of Seal Source." FAC ¶ 13. Seal Source alleges further
18 that at the time Calderon was laid off, Seal Source discovered that
19 Calderon had, without Seal Source's permission, and against Seal
20 Source's written policies made known to Calderon, accumulated and
21 disclosed Seal Source trade secrets to Castro for the purpose of
22 entering into a competing business, including in Latin America. FAC
23 ¶ 20. Seal Source alleges that defendants HSIC, Calderon and Castro
24 have intentionally interfered with Seal Source's relations with its
25 customers, vendors and suppliers. FAC ¶ 28.

26 Seal Source seeks money damages, punitive damages in the
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1 amount of \$500,000, a permanent injunction prohibiting defendants
2 from further disclosure and use of Seal Source's confidential
3 information, and an order requiring the return of such information.

4 **Procedural History**

5 This action was originally filed on July 29, 2009. According
6 to the docket sheet, affidavits of service submitted July 29, 2009
7 show that Calderon, Castro, and Casdel HNOS SA were served on July
8 29, 2009. (Doc. # 5).

9 Roger Hennagin appeared on behalf of Calderon on August 4,
10 2009 (doc. # 15) and filed a motion to dismiss for lack of
11 jurisdiction on his behalf. (Doc. # 16). On August 27, 2009, Judge
12 Redden denied the motion to dismiss. (Doc. # 28). Meanwhile, a show
13 cause hearing was set before Judge Redden on September 3, 2009.
14 (Doc. # 29). The hearing was stricken because the parties submitted
15 a stipulated order for preliminary injunction. (Doc. # 31). Under
16 the terms of the stipulated order, defendants were to return to
17 Seal Source all proprietary and/or trade secret information, and
18 Seal Source was to post a bond in the amount of \$10,000. (Doc. #
19 33).

20 The court held a Rule 16 conference on December 15, 2009.
21 (Doc. # 37). Seal Source was ordered to serve the complaint and
22 summons on the non-appearing defendants no later than January 15,
23 2010. Calderon was to file his answer no later than January 19,
24 2010. The Rule 16 was continued to January 19, 2010, with the
25 parties being notified that the court would dismiss any defendants
26 not yet served and would set a full case schedule. (Doc. # 37)

1 Defendants Seal Supply Peru SA, Casdel HNOS SA, and Dulia
2 Castro were dismissed by Seal Source on January 15, 2010. (Doc. #
3 40).

4 In a status report filed with the court on February 8, 2010,
5 Seal Source stated that it had located a United States address for
6 Castro, and a company that Calderon and Castro appeared to be
7 operating out of Florida, and that it would amend the complaint to
8 reallege Castro and HSIC's participation in the conduct alleged.
9 (Doc. # 45). The First Amended Complaint (FAC) was filed against
10 all defendants on February 12, 2010. (Doc. # 46). Summons were
11 issued to HSIC and Dulia Castro. Calderon filed an answer to the
12 FAC on February 26, 2010. An affidavit of service upon Dulia
13 Castro, showing substituted service by mailing was filed April 28,
14 2010. (Doc. # 49).

15 On April 28, 2010, Seal Source filed a motion for entry of
16 default against Castro and HSIC. (Doc. # 51). The court entered an
17 order of default against these defendants on May 12, 2010 (doc. #
18 54). On May 18, 2010, Roger Hennagin made a special appearance on
19 behalf of Dulia Castro. (Doc. # 55). On the same date, Castro filed
20 a motion to quash service of summons on her (doc. # 56).

21 Discussion

22 Dulia Castro was served by substituted service on Jorge
23 Ordinola. A copy of the summons and complaint were left at his
24 personal residence in Florida. Ordinola is the person who
25 incorporated HSIC in Florida. Ordinola Affidavit ¶ 15. When
26 Ordinola completed the HSIC Articles of Incorporation, via
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1 Florida's official website, he listed the address of HSIC vice
2 president Dulia Castro as his own home address rather than her home
3 address in Peru. Id. He states in his affidavit that he did so
4 because Castro, a non-English speaker, "would not be able to read
5 or understand any written communications that she might receive
6 from the Florida Corporation Commissioner." Id.

7 Ordinola states that Castro is a childhood friend of his, and
8 that she stays at his house whenever she is in the United States,
9 but that her visits have never lasted more than a week, with the
10 last visit occurring, to his recollection, in November 2008. Id. at
11 ¶¶ 6, 9, 10, 11. According to Ordinola, he and Castro communicate
12 between Florida and Peru via email and telephone. Id. at ¶ 8.

13 Seal Source argues that service was sufficient because under
14 Florida law, process against any corporation may be made upon the
15 president or vice president of the corporation. Fla. Stat. Ch.
16 607.0504(2), Fla. Stat. 48.081(1)(a). Florida law also provides
17 that service of process against a corporation may be made upon the
18 registered agent of the corporation, if a corporate officer is not
19 present. See Fla. Stat. Ch. 48.081(2). Regardless of whether Seal
20 Source has properly served HCIS, the question presented by this
21 motion is whether substituted service on Ordinola constitutes
22 personal service on HCIS's vice president, Castro. Seal Source has
23 not cited any authority to support its argument that substituted
24 service at Ordinola's residence-- where Castro is apparently no
25 more than an occasional visitor--is sufficient to constitute
26 service on Castro herself.

1 However, Seal Source does argue that under Florida law,
2 substituted service is effective when "at the time of service
3 circumstances were such that it could be presumed that the matter
4 would be brought to [her] attention." Barnett Bank of Clearwater,
5 N.A. v. Folsom, 306 So.2d 186, 187 (Fla. 1975). Seal Source argues
6 that service on Ordinola is sufficient to constitute a circumstance
7 in which this action would have been brought to Castro's attention.
8 I do not find this argument persuasive, because Barnett is readily
9 distinguishable on its facts. In that case, substituted service of
10 process was obtained on defendant husband by leaving process with
11 his wife at their place of residence. Defendant and his wife were
12 living together at the time. As the court stated, "There [was] no
13 question that service was made in literal compliance with the
14 statute." Id. The statute in question allowed substituted service
15 by leaving copies of the complaint and summons at the defendant's
16 usual place of abode with a member of his family over the age of 15
17 so long as that person is told the nature of the papers. Id. at n.
18 1.

19 In the case before this court there is no literal compliance
20 with the statute. Castro does not reside at Ordinola's address and
21 he is not a member of her family. The foundational equivalents of
22 Barnett are not present to support a presumption of notice being
23 given by Ordinola to Castro. The Barnett court held that the person
24 bringing the action had no reason to believe that the wife would
25 not communicate her knowledge of service to her husband, because
26 the circumstances were such that it could be presumed that the

1 matter would be brought to his attention.

2 Such circumstances do not exist in this case. First, as
3 mentioned above, Seal Source points to no statute supporting
4 service with which it complied for Castro personally. Further,
5 Ordinola's use of his home address as that of Castro for purposes
6 of incorporating HCIS does not reasonably give rise to a
7 presumption that communications directed to Castro personally would
8 be communicated by Ordinola to Castro. HCIS, as a corporation, has
9 a separate and distinct identity from Castro personally. Castro
10 does not reside or spend significant time at Ordinola's address.
11 Indeed, Castro does not reside in the United States. I recommend,
12 therefore, that the motion to quash service on Castro (doc. # 56)
13 be GRANTED.

14 **Scheduling Order**

15 These Findings and Recommendation will be referred to a
16 district judge. Objections, if any, are due August 5, 2010. If no
17 objections are filed, then the Findings and Recommendation will go
18 under advisement on that date. If objections are filed, then a
19 response is due August 23, 2010. When the response is due or
20 filed, whichever date is earlier, the Findings and Recommendation
21 will go under advisement.

22 Dated this 15th day of July, 2010.

23
24 /s/Dennis James Hubel

25 Dennis James Hubel
26 United States Magistrate Judge